FILE COPY

NOV
CHARLES EL

No. [redacted] 39

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

J. R. WHEELER, PETITIONER,

VS.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE BY HERMAN M. LANGWORTHY, RECEIVER OF THE KANSAS CITY JOINT STOCK LAND BANK, AND FLOYD L. ROGERS, RECEIVER OF THE OHIO JOINT STOCK LAND BANK OF CINCINNATI, OHIO, AND BRIEF.

CYRUS CRANE,
E. F. HALSTEAD,
Counsel for Herman M. Langworthy, Receiver.

JOSEPH J. DANIELS,
Counsel for Floyd L. Rogers, Receiver.

No. 711.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

J. R. WHEELER, PETITIONER,

VS.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE BY HERMAN M. LANGWORTHY, RECEIVER OF THE KANSAS CITY JOINT STOCK LAND BANK, AND FLOYD L. ROGERS, RECEIVER OF THE OHIO JOINT STOCK LAND BANK OF CINCINNATI, OHIO.

May it Please the Court:

The undersigned as counsel for Herman M. Langworthy, receiver of the Kansas City Joint Stock Land Bank and Floyd L. Rogers, receiver of the Ohio Joint Stock Land Bank, respectfully move this Honorable

Court for leave to file the accompanying brief in this case as *amici curiae*.

CYRUS CRANE,
E. F. HALSTEAD,
Counsel for Herman M. Langworthy, Receiver.

JOSEPH J. DANIELS,
Counsel for Floyd L. Rogers, Receiver.

No. 711.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

J. R. WHEELER, PETITIONER,

VS.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN.

BRIEF.

With respect to the receiver of the Kansas City Joint Stock Land Bank, this brief is tendered on behalf of a member of the bar of this court who, both as counsel and receiver, has had under the direction of the Federal Farm Loan Board more than two years continuous experience in the practical administration of the affairs of an insolvent Joint Stock Land Bank. Both receivers joining in the brief deem the question involved in this case of the utmost importance in the proper performance of their duties.

If excuse or apology is needed for its tender, it is to be found in the sincere belief based on such

practical experience that the opinion of this court (a) fails to take into consideration the very great responsibility resting upon the United States Government in respect to bonds issued as part of that vast financial structure created by it under the provisions of the Federal Farm Loan Act, and which as declared by Congress was designed to "serve governmental purposes" (see *Smith* v. *Kansas City Trust Company*, 255 U. S. l. c. 211); and (b) imposes upon the bonds of land banks an impairment and burden, *i. e.*, enforcement of stockholders' liability, never intended by the Federal Farm Loan Act if consideration be given to all parts of that Act, and to its broad scope and purposes.

The suggestions here made are offered with the conviction that they have not heretofore been fully presented to or considered by this court, and in the hope that they may be helpful on the highly important question now before the court.

I.

The underlying interest which the United States Government has in the stability and security of farm loan bonds issued pursuant to the provisions of the Federal Farm Loan Act has not been fully presented nor considered.

On June 30, 1929, there were unmatured Farm Loan Bonds issued pursuant to the provisions of the Federal Farm Loan Act by Federal Land Banks and Joint Stock Land Banks (including Joint Stock Land Banks in Receivership) in the aggregate sum of over one billion eight hundred million ($1,800,000,000.00) dollars (see "Statements of Condition of Federal Land

Banks, Joint Stock Land Banks, Federal Intermediate Credit Banks," issued by the Federal Farm Loan Bureau in the Treasury Department as of June 30, 1929, pages 1, 7 and 27, or Twelfth Annual Report of the Federal Farm Loan Board to Congress, House Documents 382). These bonds are now held by thousands upon thousands of investors throughout the entire United States.

The fact that the United States Government has authorized and approved the issuance of this enormous amount of securities, which under the terms of the Act "shall be deemed and held to be instrumentalities of the Government of the United States" (see Section 26 of Federal Farm Loan Act; U. S. Code, Section 931), challenges instant and careful inquiry into the security which lies behind these bonds and the safeguards with which they are surrounded.

The stability of this gigantic financial structure created for Governmental purposes is of necessity a matter of Governmental concern, and the intent of Congress concerning the safeguards which it sought to establish must be determined from the entire scope of the Act.

Under the terms of the Act, Congress provided that (Section 3 of the Federal Farm Loan Act; U. S. Code, Section 664):

> "It shall be the *duty* of the Federal Farm Loan Board to prepare from time to time bulletins setting forth the principal features of this chapter and through the Department of Agriculture or otherwise to distribute the same, particularly to the press, to agricultural journals, and to farmers'

organizations; to prepare and distribute in the same manner circulars * * * *advising investors of the merits and advantages of farm loan bonds* * * *"* (our italics).

Surely the United States Government has a vital interest in the stability and security of bonds thus placed in the hands of investors.

Section 16 of the Act provides among other things (U. S. Code, Section 821):

> "Each joint stock land bank organized under this chapter shall have authority to issue bonds based upon mortgages taken by it in accordance with the terms of this chapter. Such bonds shall be in form prescribed by the Federal Farm Loan Board, *and it shall be stated in such bonds that such bank is organized under this subdivision of this chapter* (Section 16 of the Act), *is under Federal supervision, and operates under the provisions of this chapter"* (our italics).

Section 16 of the Act (U. S. Code, Section 812) also provides for the double liability of shareholders of Joint Stock Land Banks.

Surely any bondholder purchasing these bonds with the printed matter which is *required* to be placed on the face thereof, would have the right to assume that the Federal Government, through its agency the Federal Farm Loan Board, assumes the responsibility of enforcing the shareholders' liability for the benefit of the bondholders.

Section 26 of the Act (U. S. Code, Section 931) provides, among other things, that:

> "* * * Farm Loan Bonds issued under the provisions of this chapter, shall be deemed and

held to be *instrumentalities of the Government of the United States* * * *" (our italics).

Surely Congress could not have intended to provide for the creation of "instrumentalities of the Government of the United States" without also intending to give to the holders thereof the full benefit of the machinery set up for the protection of such instrumentalities, including the enforcement of shareholders' liability by the Government's agency, the Federal Farm Loan Board, which is charged with the administration of the Act.

Section 27 of the Act (U. S. Code, Sections 941, 942 and 943) provides:

> "That farm loan bonds issued under the provisions of this act by Federal Land Banks, or Joint Stock Land Banks *shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits.*
>
> Any member bank of the Federal Reserve System may buy and sell farm loan bonds issued under the authority of this act.
>
> Any Federal Reserve Bank may buy and sell farm loan bonds issued under this act *to the same extent and subject to the same limitations placed upon the purchase and sales by said banks of state, county, district and municipal bonds* under subsection (b) of Section Fourteen of the Federal Reserve Act approved December twenty-third, nineteen hundred and thirteen" (our italics).

Surely when the United States Government assumes the responsibility of authorizing the investment in farm loan bonds for the purposes above indicated, it must have been intended that it should assume the

responsibility of enforcing every protection placed behind those bonds, including that of the shareholders' liability.

In urging the vital interest which the United States Government has in the stability and security of these bonds, we deem it not out of place to quote the following from the brief and argument submitted by the Hon. Charles E. Hughes on behalf of the appellee Federal Land Bank of Wichita, Kansas, in the case of *Smith* v. *Kansas City Title & Trust Company, et al.*, 255 U. S. 180 in this court (see page 51 of Brief and Argument for Appellee Federal Land Bank of Wichita, Kansas):

> "If it were necessary to present the question, we should urge with confidence that these Federal Land Bank bonds are in truth supported by the good faith and credit of the United States and are protected by virtue of an actual exercise of the borrowing power.
>
> "The fact that a special fund is created to meet the liability on the bonds, or that recovery is limited, is by no means, controlling. The Government is not liable in any case unless it consents to be, and of course it may fix the measure of liability, and provide particular funds *or security for payment.* But when the Government, to meet a Governmental purpose, goes out through its officers to borrow money, and issues bonds in the name of its creature *which it not only dominates but directs,* and provides that these bonds shall 'be deemed and held to be instrumentalities of the Government of the United States,' we think, that apart from any question of mere liability to suit, *the good faith and credit of the United States lie behind them.*"

and in the synopsis of his argument in this court he said:

> "The purposes in view are *public*, not private; *national*, not local" (255 U. S. l. c. 192).

These arguments prevailed, and their substance is embodied in the opinion of this court.

We sincerely believe that the fact that the United States Government is not liable for the payment of these farm loan bonds, is an added reason for urging that Congress must have intended that the power of the United States should be exercised in every possible way through its agencies in the enforcement of all of the security behind these bonds, including that of the shareholders' liability.

II.

The Government's views should be presented through its proper official, before the case is closed.

Because of the very great interest which the United States Government has in the final determination of this case, we most respectfully but earnestly submit that before the opinion of this court becomes final this case should be set down for re-argument in order that the Department of the Treasury may submit its views concerning the interpretation of the Act and the responsibilities of the Government for enforcement of the shareholders' liability. That procedure was followed by this court, of its own motion in the case of *Sullivan* v. *Kidd*, 254 U. S. 433. That case was between private individuals, but involved the construction of a treaty between Great Britain and the United States.

After the case had been argued, this court of its own motion, presumably because of the interest of the United States in the proper construction of the treaty, ordered the case set down for re-argument and that the Attorney General of the United States and of the State of Kansas be notified of the pendency of the cause. This court said (page 438):

> "The case was argued and submitted at the last term of this court. It was ordered reinstated with notice to the Attorneys General of the United States and of the State of Kansas. The case has been reargued. *The Solicitor General presented the views of the State Department of the United States, and submitted a brief in behalf of the Government*" (our italics).

It is of interest to note that the conclusion of the court in that case was based in part upon views expressed by the Secretary of State to the Department of Justice, after the case had been first argued, and setting forth the views of the Secretary of State concerning the proper construction of the treaty in question. On this point the court said (*Sullivan* v. *Kidd*, 254 U. S. l. c. page 438):

> "The American contention is stated by the Solicitor General, and appears by a communication from the Secretary of State of October 2, 1920 (the case was first argued April 27, 1920), sent in response to the invitation of the Solicitor General, and now on the files of the Department of Justice" (the above parenthetical insertion is ours).

We respectfully submit that in the case at bar, because of the vital interest which the United States

Government must have in the protection and security of the enormous volume of farm loan bonds which it has sponsored and approved, and caused to be placed upon the market for investment, the case should be reargued in order that the Government's view may be fully presented and considered.

In any event the proper construction of the Act should be approached with a full appreciation and consideration of the broad Governmental purposes and interests involved, and the character of security and protection which the Act as a whole indicates that Congress must have intended.

III.

Specific provisions of the Act which indicate a clear intent upon the part of Congress that the shareholders' liability should constitute an asset of the bank and, therefore should be enforceable by the Farm Loan Board and its receiver, have not heretofore been called to the attention of the court, and were not considered in the opinion.

In its opinion this court states that:

> "The receiver has power to collect the assets of the bank, *but the liability of stockholders is no part of those assets*" (our italics).

Respectfully, but earnestly, we insist that the last clause of that statement has overlooked and failed to give consideration to the Federal Farm Loan Act in its entirety, and to specific provisions of the Act which we think necessarily lead to an opposite conclusion.

The Federal Farm Loan Act does not attempt to prescribe in detail the procedure to be followed in the

event of insolvency of Federal Land Banks and *Joint Stock Land Banks* except by reference to and adoption of proceedings prescribed in cases of insolvency of National Farm Loan Associations. The act says (Section 29 U. S. Code, Section 966):

> "Upon default of any obligation, Federal Land Banks and Joint Stock Land Banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Land Board, *and proceedings shall thereupon be had in accordance with the provisions of this section regarding National Farm Loan Associations*" (our italics).

What then are the proceedings to be had in the event of insolvency of the Farm Loan Association or a Joint Stock Land Bank? The same section 29 answers thus:

> "Such receiver under the direction of the Federal Farm Loan Board shall take possession of the books, records and assets of every description of such association, collect all debts, dues and claims belonging to it," etc.

In addition to this and to make sure that no stockholder shall escape his liability, *which liability is by the act made an asset of the defunct Farm Loan Association and not of creditors*, section 29 of the act as amended (U. S. Code, Section 966) provides:

> "Upon liquidation of any National Farm Loan Association, the stock in the Federal Land Bank held by such association shall be canceled, etc. * * * *The personal liability of the stockholders* in such liquidated association *to the association* shall survive such liquidation *and shall be vested in the bank in that district, which may enforce the same as fully as the association could if in existence*" (our italics).

The foregoing then are the "proceedings" which shall be had (as provided in the act) upon the insolvency not only of a National Farm Loan Association but as well upon the insolvency of a Joint Stock Land Bank.

Now, we respectfully submit that a careful analysis of the act itself shows that the *personal liability* above referred to must relate solely to the double liability of shareholders of National Farm Loan Associations as provided in section 9 of the act (U. S. Code, Section 744). It could not relate to personal liability on stock subscriptions, because such subscriptions must be paid in cash (Section 8 of the Act; U. S. Code, Section 733). It could not relate to personal liability of the shareholder on his mortgage loan, because the loan of the shareholder is procured from the land bank of the district (Section 9 of the Act; U. S. Code, Section 741), and the association merely endorses the loan (Section 11 of the Act; U. S. Code, Section 761). It could not relate to the assessment leviable for "expenses of said association" under section 7 of the act (U. S. Code, 715), because after liquidation of the association it could not have "expenses" of the character contemplated in said section 7.

Therefore, under the plain terms of the act (Section 29 of the Act; U. S. Code, Section 966), the *personal liability* of the stockholders is a liability *"to the association,"* and therefore is an asset of the association and upon liquidation of the association enures to the benefit of the land bank of the district.

Since the personal liability of shareholders (the double liability) of a farm loan association, as provided by section 9 of the act (U. S. Code, Section 744), belongs to the association (Section 29 of the Act, U. S. Code, Section 966, last sentence), and therefore constitutes an asset in the hands of a receiver of a farm loan association to be collected by such receiver (Section 29 of the Act; U. S. Code, Section 961), it would seem clear that it was the intent of Congress by the provisions of that portion of section 29 of the act above quoted (U. S. Code, Section 963), that the personal liability (the double liability) of shareholders of a joint stock land bank, as provided by section 16 of the act (U. S. Code, Section 812), should likewise constitute an asset of the bank, and in case of a receivership, should be collected by the receiver the same as all other "debts, *dues*, and claims belonging to it" (U. S. Code, Section 961), since, as pointed out above, the "proceedings" in the event of insolvency are the same.

IV.

There has not been a full presentation or consideration of the fact that Congress has given to the Federal Farm Loan Board the specific power to call upon any land bank for additional security to protect the bonds issued by it.

Section 19 of the Act (U. S. Code, Section 856) provides as follows:

> "The Federal Farm Loan Board may at any time call upon any land bank for additional security to protect the bonds issued by it."

Since the Federal Farm Loan Board has the power to call upon any land bank for additional security to

protect the bonds issued by such bank, the Board clearly has the power to enforce the giving of such security, and the bank has the *obligation* to furnish it.

If the bank does not meet this obligation, then clearly under the provisions of section 16 of the act (U. S. Code, Section 812), this is one of the "contracts, debts and engagements of such bank" for which the shareholders are liable, equally and ratably, to the extent of the amount of stock owned by them.

Obviously, this is not an obligation which a bondholder may enforce, because the power to require such additional security is vested in the Federal Farm Loan Board. When the bank becomes insolvent, it clearly becomes the duty of the Farm Loan Board to make a requisition and assessment on the shareholders to the extent of their liability in order to provide the additional security to protect the bonds of the insolvent bank.

This is manifestly one of the safeguards with which Congress intended to surround the bonds of the bank, and which it gave the Federal Farm Loan Board the undoubted power to enforce.

V.

Due consideration has not been given to the meaning and effect of clause (j) of section 17 of the Act (U. S. Code, section 831).

Section 17 of the Act (U. S. Code, Section 831) provides, among other things:

> "That the Federal Farm Loan Board shall have power—
> (j) To exercise such incidental powers as shall be necessary or requisite *to fulfill its duties and carry out the purposes of the act*" (our italics).

This court makes no reference to this provision of the Act whatever, although Congress must have intended it to have some meaning.

One meaning (among others) is definite and obvious. Congress gives to the Farm Loan Board the power "at any time" to "call upon any land bank for additional security to protect the bonds issued by it" (Section 19 of the Act; U. S. Code, Section 856).

It should be borne in mind that it is not contemplated by the Act that a joint stock land bank shall have any creditors (excepting usual current operating obligations) other than the bondholders. These banks are not banks of deposit (see Section 14 of the Act; U. S. Code, Section 791; also Section 16 of the Act; U. S. Code, Section 813). Consequently Congress was chiefly concerned with the protection of the bonds, and the protection of the bonds must necessarily be the paramount *"purpose"* in providing for the double liability of shareholders (section 16 of the Act; U. S. Code, Section 812).

Since the Federal Farm Loan Board is given the specific power "at any time" to "call upon any land bank for additional security to protect the bonds issued by it" (Section 19 of the Act; U. S. Code, Section 856), and since the Board is further given the power "to exercise such incidental powers as shall be necessary or requisite to *fulfill its duties and carry out the purposes of the Act*" (Section 17 of the Act; U. S. Code, Section 831), Congress clearly gave to the Board the power to enforce the shareholders' double liability in order to fulfill its duty of requiring additional se-

curity and carrying out the purposes of the Act in thus protecting the bonds of the bank.

The obvious explanation of the omission from the Federal Farm Loan Act of any provision that a receiver may enforce the individual liability of the shareholders, as in the case of the National Bank Act (U. S. Code, Section 192), is that such power is otherwise specifically and adequately provided for (a) by making, in the "proceedings" in case of insolvency, the stockholders' liability a part of the assets belonging to the defunct loan association or joint stock bank (as pointed out in paragraph III, *supra*), and (b) by vesting in the Federal Farm Loan Board the power to require a land bank to give additional security to protect the bonds issued by it, and giving the Board the right to exercise the powers necessary to fulfill its duties and carry out the purposes of the Act. If in order to compel the giving of additional security to protect the bonds issued by a land bank, it becomes necessary to declare such bank insolvent, appoint a receiver, and proceed to enforce the shareholders' liability, the Board obviously has that power.

Any other conclusion, we submit, would lead to untenable results. The Federal Farm Loan Act has no specific provision authorizing the Federal Farm Loan Board, upon appointing a receiver, to cause notice to be given calling for the filing of claims, as in the case of the National Bank Act (U. S. Code, Section 192); nor does the Federal Farm Loan Act contain any specific provision authorizing the Farm Loan Board to make a ratable dividend of moneys collected and paid

over by the receiver, as in the National Bank Act (U. S. Code, Section 194). It would scarcely be contended, however, that because of these omissions that, upon the appointment of a receiver the Board could not cause notice to be given calling for the filing of claims, or could not make a ratable dividend of moneys collected by its receiver. These powers were obviously intended to be included in the general powers given the Board to fulfill its duties and carry out the purposes of the Act, and so is the power to enforce stockholders' liability.

VI.

Due consideration has not been given to the construction placed upon the Farm Loan Act by the Federal Farm Loan Board, which is charged with the administration thereof.

In the case of *Sullivan* v. *Kidd*, 254 U. S. p. 433, this court said (l. c. 442):

> "While the question of the construction of treaties is judicial in its nature, and courts, when called upon to act, should be careful to see that international engagements are faithfully kept and observed, *the construction placed upon the treaty before us and consistently adhered to by the executive department, charged with the supervision of our foreign relations should be given much weight*" (our italics).

The same rule has been announced in the construction of statutes. The *Sullivan* v. *Kidd* case, however, is of particular interest, because in that case it appears that the court in reaching its conclusion took judicial knowledge of "the archives of the Department of State,"

also "public documents on file in the State Department" and also a "letter of the Secretary of State of October 2, 1920 (on file in the Department of Justice)," written after the case was argued.

We submit that likewise great weight should be given the construction which has been placed upon the Federal Farm Loan Act by the Federal Farm Loan Board. The Federal Farm Loan Bureau is under the supervision of the Federal Farm Loan Board and is a bureau in the Department of the Treasury (Section 3 of the Act; U. S. Code, Section 651). The Secretary of the Treasury is a member and chairman *ex officio* of the Federal Farm Loan Board.

The records of the Bureau show that throughout the entire period of the existence of the Act, there has never been a receiver appointed for a Federal Land Bank, nor for a National Farm Loan Association. Receivers have been appointed for three Joint Stock Land Banks.

There are twelve federal land banks in twelve districts, covering the entire continental United States (see Section 4 of the Act; U. S. Code, Section 671). There are approximately 4670 farm loan associations which operate in connection with the federal land banks of their respective districts (see Section 7 of the Act; U. S. Code, Section 720). There are forty-eight joint stock land banks in operation, and three joint stock land banks in receivership. *Joint stock land banks do not and cannot loan through farm loan associations.*

The three joint stock land banks in receivership are the Kansas City Joint Stock Land Bank of Kansas

City, Missouri, the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, and the Ohio Joint Stock Land Bank of Cincinnati, Ohio. At the time when receivers were appointed for these three banks they had bonds outstanding in the aggregate sum of approximately sixty million dollars. Their bondholders (as shown by the records and reports of the Board), lived in practically every state in the Union, and some of them lived in foreign countries. They had outstanding stock aggregating approximately five million dollars, and had a total of approximately two thousand stockholders, living in almost every state of the Union, and some of them living in foreign countries.

Shortly after a receiver was appointed for the Kansas City Joint Stock Land Bank on May 4, 1927, the Federal Farm Loan Board was reorganized and the most careful consideration and painstaking effort has been exercised in the rehabilitation of the land bank system. Most intensive and complete supervision has been exercised, not only over the entire system, but over the three receiverships, to the end that the administration thereof might be economical and efficient and the losses to the bondholders minimized as much as possible.

After exhaustive investigation and with the advice of counsel, the Federal Farm Loan Board came to the conclusion that under the provisions of the Farm Loan Act, it was its duty to enforce the liability of the shareholders of the respective banks, if liabilities of the bonds exceeded the assets. At the direction and under the supervision of the Federal Farm Loan Board,

the respective receivers made a detailed, exhaustive and analytical investigation and valuation of the assets of their respective banks. In the case of the Kansas City bank, these assets were situated in five states. In the cases of the Milwaukee bank and the Cincinnati bank, the assets were situated in two states each.

On the basis of these valuations, the board found that in the case of each of these banks the losses were in excess of the entire capital stock of each of the banks even with the amount realized from the double liability of stockholders added. Accordingly the board made orders in the case of each of the banks levying a one hundred per cent assessment upon the shareholders, and making a requisition and demand upon the shareholders for the payment of their liability as provided by the Act. In the case of the Milwaukee Bank over five hundred thousand dollars has been paid upon the assessment by the shareholders. In the case of the Kansas City bank approximately two hundred and forty thousand dollars has been paid upon the assessment. In the case of the Cincinnati bank approximately forty thousand dollars has been paid upon the assessment. (All statements of fact above named are taken from records and reports of the board, which are Government documents.)

We submit that great weight should be given the construction thus placed upon the Act by the farm loan board, which is charged with the construction of the Act, and which has given continuous and unremitting thought and effort to the carrying out of the purposes thereof.

It would seem to be of unusual significance that in the eleventh annual report of the Federal Farm Loan Board to the speaker of the house of representatives, as required under the provisions of Section 3 of the Act (U. S. Code, Section 661), the federal farm loan board reported to the congress the action taken by it in levying an assessment upon the shareholders of the Bankers Joint Stock Land Bank of Milwaukee, and also in levying an assessment upon the shareholders of the Ohio Joint Stock Land Bank of Cincinnati, pursuant to the construction which the board has placed upon the Act. (See Eleventh Annual Report of Federal Farm Loan Board for the year ended December 31, 1927, House Document No. 324.) As required by the Act, this report was printed for the information of the Congress.

VII.

Confusion may result from some of the statements inadvertently made by the court in its opinion.

In the Court's opinion in the case at bar, it is stated (page 2):

> "But the joint stock land banks issue no such notes. They are created to make loans on farm mortgages *to members of an association in a territorially limited district*, and are relatively local affairs." (Italics ours.)

Under the terms of the Act, the farm loan associations may make loans in connection with *Federal* land banks of the district (see Section 7 of the Act; U. S. Code, Section 720). There is no provision in the Act permitting *joint stock* land banks to loan through as-

sociations. The case at bar has to do with a *joint stock* land bank.

Nor do we think joint stock land banks should be deemed to be local affairs. In the cases of the Kansas City bank and the Milwaukee bank, they have shareholders in most of the states of the Union and in foreign countries. It seems inconceivable that Congress could have intended that bondholders should be put to the enormous expense of enforcing the shareholders' liability through the innumerable ancillary proceedings that would be necessary if they must collect through a creditors' bill. It cannot benefit the shareholder. It simply means added expense and delay to the bondholder.

VIII.

Due consideration has not been given to the magnitude of the land bank system as compared with the National banking system in determining the intent of Congress.

The court in its opinion states that there is a plain reason for the difference between the National Bank Act and the Federal Farm Loan Act. The court said:

> "The National banks issue notes that constitute an important part of the currency of the country and that the United States has an interest in seeing paid. It is upon the bank's refusal to pay these notes that the comptroller of the currency is to appoint a receiver, and the authority to enforce the stockholders' liability adds a security to the national circulation that is of national scope. But the joint stock land banks issue no such notes. They are created to make loans on farm mortgages to members of an association in

a territorially limited district, and are relatively local affairs."

(We have shown above that the court's statement in regard to the functions of the joint stock land bank is erroneous.)

However, in considering the reasoning of the court in the above paragraph, it is interesting and important to note that on June 30, 1929, farm loan bonds were outstanding as follows:

Federal land banks		$1,179,872,340.00
Joint stock land banks:		
Going banks	$589,360,000.00	
Banks in receivership	59,240,085.00	648,600,085.00
Total		$1,828,472,425.00

On the same date the total amount of outstanding national bank currency was $649,452,000.00.

It therefore appears that on June 30th, 1929, there were farm loan bonds outstanding in an amount almost three times the amount of outstanding national bank currency, and the joint stock land banks alone had outstanding bonds approximately equal to outstanding bank currency.

The outstanding national bank currency is secured by United States bonds held by the treasurer and part assumed by the United States on deposit of lawful money for their retirement, and such currency is absolutely protected by such security (U. S. Code, Section 101). In addition the United States has a paramount lien upon the general assets of the bank to protect such currency. (U. S. Code, Section 194.)

The farm loan bonds outstanding under the farm loan system are secured by farm mortgages, which are not of the same class of security as Government bonds, and there is, therefore, an even stronger reason of policy for providing the protection of stockholders' liability in the case of farm loan bonds than there is in the case of national bank currency.

It must be clearly apparent that the United States Government has a very great interest in the protection of the tremendous volume of farm loan bonds sponsored by it, and issued with its authority and approval. The creation of a financial structure of the size and magnitude of the farm loan system carries with it very grave responsibilities. All doubts should be resolved in favor of the utmost possible protection for these farm loan bonds. If the security of these bonds is to be weakened, if the power of the board to require additional security is to be limited from lack of ability to enforce its requirements, then the bonds cease to become an attractive investment, and serious injury to the entire system may follow. But it seems to us that, for the reasons stated, such an unfortunate result is not legally necessary.

It is respectfully urged that the petition for rehearing ought to be granted.

CYRUS CRANE,
E. F. HALSTEAD,
Attorneys for Herman M. Langworthy, Receiver.

JOSEPH J. DANIELS,
Attorney for Floyd L. Rogers, Receiver.